



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1996

Mr. Scott A. Kelly
Assistant General Counsel
The Texas A & M University System
Office of the Vice Chancellor and
General Counsel
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR96-2369

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37107.

Texas A&M University (the "university") received two separate requests for information. The November 6, 1995 request asked for:

- Written grievance against Texas A&M University and various staff members filed by Texas A&M Chemistry Professor Dr. John Bockris.
- Schedule of meetings of grievance committee in the Bockris case.
- Names of members on grievance committee in the Bockris case.

A subsequent November 8, 1995 request asked for documents comprising:

a full and complete copy of the grievance filed by Dr. Bockris along with all attachments, supporting documents, which accompany this grievance . . . a copy of all correspondence to and from the College Level Grievance Committee, the University Grievance Committee, Dr. Ray Bowen, Dr. Bill Perry, Dr. Richard Ewing, Dr. Michael Kemp, Dr. Emile Schweikert, Ms. Genevieve Stubbs, Mr. Gaines West and Dr. John Bockris regarding this grievance. I would also like to

know the member composition of the College Level Grievance Committee who is presently considering this grievance and to have a copy of the "charge" to the committee by the University administration and their schedule for accomplishing the charge given to them.

The university seeks to withhold the requested information based on section 552.103 of the Government Code. You enclosed representative samples of the information the university seeks to withhold.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The university has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in the instant situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The university must meet both prongs of this test for information to be excepted under section 552.103(a). We observe that along with the requested documents, the university submitted for our review a copy of an original petition styled as *Dawn Lee Wakefield vs. Texas A&M Development Foundation and Texas A&M University*, No. 40,518-85 (85th Judicial Dist.Ct., Brazos County, Tex., June 1994).


The preliminary inquiry concerning the applicability of section 552.103 depends on the answer to the question of whether the university is a party to litigation. That first prong is established. Next, the pertinent question is, "does the information constitute information relating to that litigation?" Open Records Decision No. 555 (1990).

After reviewing the documents, we conclude that they are related to the litigation. Therefore, the university may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID#37107

Enclosures: Submitted documents

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